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Date: Wed, Jul 11, 2001 6:08 PM
Subject: Draft Discrimination Task Group Report

Below is the result of your feedback form. It was submitted by
James E. Foster (JEF@NRC.GOV) on Wednesday, July 11, 2001 at 18:08:17

Affiliation: NRC Region III

Comments: I appreciated attending the meeting in Region III.

As long as two agencies are involved in investigating and evaluating the discrimination process, there will be problems.

NRC sends its OI Criminal Investigators to investigate(remember, this is some 44% of their workload [apparently no criminal convictions on such investigations in history]). They produce a voluminous report with interview transcripts and exhibits, which may go to the Department of Justice for prosecutorial review before being declined. As a technical agency, the NRC may not be the best location for such an investigation. Utilizing Criminal Investigators greatly increases the cost of such investigations (early retirement and 25% more salary). The referrals to DOJ also complicate the process.

OSHA sends its civil investigators. I am not cognizant with their reports or format, except that they do not go to the Department of Justice. Both reports then are evaluated by the two agencies, and a decision made. From the discussions, the decisions are usually consistent, but not always. With two different investigations and two decisionmakers (possibly different criteria?) this is to be expected.

Due process, the ability to present one's case before a decisionmaker before the decision or action, appears straightforward under the Department of Labor procedure. It is not clear to me under either the old or proposed NRC flowcharts displayed. Yes, licensee or concerned individual lawyers are sometimes present during interviews, but the investigator is not supposed to be the decisionmaker described in Due Process.

The NRC needs to start from the "ground up" and review this process, clearly defining our interest(s), removing the criminality aspects, assuring that one cost-effective investigation and one agency decision takes place, and that Due Process is served for both parties in a timely fashion. Otherwise, we will have another Task Force years from now, tasked with the same mission.

NRC needs to admit that 44% of the cases conducted by the Office of Investigations had virtually no likelihood of criminal prosecution, look at the other investigations performed and reclassify investigators as Civil Investigators, saving the agency some estimated \$600,000 per year.

James Foster

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